

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HASAN ERSEN,

Plaintiff(s),

Index #CV 08 6706

-against-

VERIFIED ANSWER
WITH JURY DEMAND

BANANA REPUBLIC, LLC,

Defendant(s).

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Defendant, BANANA REPUBLIC, LLC, by their attorneys,

McANDREW, CONBOY & PRISCO, answer the Complaint of the plaintiff as follows:

1. Denies each and every allegation contained in the paragraphs of the Complaint designated as “1”.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “2”.
3. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “3”.
4. Admits each and every allegation contained in the paragraphs of the Complaint designated as “4”.
5. Admits each and every allegation contained in the paragraphs of the Complaint designated as “5”.
6. Admits each and every allegation contained in the paragraphs of the Complaint designated as “6”.
7. Admits each and every allegation contained in the paragraphs of the Complaint designated as “7”.

8. Admits each and every allegation contained in the paragraphs of the Complaint designated as “8”.

9. Admits each and every allegation contained in the paragraphs of the Complaint designated as “9”.

10. Admits each and every allegation contained in the paragraphs of the Complaint designated as “10”.

11. Admits each and every allegation contained in the paragraphs of the Complaint designated as “11”.

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “12” and refers all questions of law and fact to this Honorable Court.

13. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “13”.

14. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “14”.

15. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “15”.

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “16”.

17. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “17”.

18. Denies each and every allegation contained in the paragraphs of the Complaint designated as “18”.

19. Denies each and every allegation contained in the paragraphs of the Complaint designated as “19”.

AS TO THE SECOND CAUSE OF ACTION

20. Repeats and reiterates each and every denial contained in the paragraphs of this Answer numbered "1" through "19", to each and every allegation contained in the paragraph of the Complaint designated as "20".

21. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "21".

22. Denies each and every allegation contained in the paragraphs of the Complaint designated as "22".

23. Denies each and every allegation contained in the paragraphs of the Complaint designated as "23".

24. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "24".

25. Denies each and every allegation contained in the paragraphs of the Complaint designated as "25".

26. Denies each and every allegation contained in the paragraphs of the Complaint designated as "26".

**AS AND FOR A FIRST SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE:**

That the fault, negligence and culpable conduct of the plaintiffs herein, either in whole or in part, caused the incident in which the plaintiffs were injured and/or injuries resulting therefrom.

**AS AND FOR A SECOND SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE:**

Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative service, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules, and consequently, if any damages are recoverable against the said answering defendant, the amount of such damages shall be diminished by the amount of the fund which plaintiff has or shall receive from such collateral source.

**AS AND FOR A THIRD SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE:**

That if any liability is found against this answering defendant, then said liability will constitute 50% or less of the total liability assigned to all persons liable and, as such, the liability of this answering defendant to plaintiff for non-economic loss shall be limited and shall not exceed this answering defendant's equitable share, as provided in Article 16 of the CPLR.

**AS AND FOR A FOURTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE:**

Plaintiff misused the product and put the product to unforeseeable, unintended, unexpected or abnormal uses, and is thereby barred from recovery.

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

WHEREFORE, the answering defendant(s) demand(s) judgment dismissing the Complaint of the plaintiff(s) herein together with the costs and disbursements of this action.

The signature certifies that to the best of the certifier's knowledge the statements in this paper are correct.

Dated: Woodbury, New York
August 11, 2008

YOURS, etc.,

/s/ Peter G. Prisco

McANDREW, CONBOY & PRISCO
By: PETER G. PRISCO (7397)
Attorneys for the Defendant(s)
95 Froehlich Farm Boulevard
Woodbury, New York 11797
(516) 921-8600

TO: BAINTON McCARTHY, LLC
Attorneys for Plaintiff
26 Broadway, Suite 2400
New York, New York 10004
(212) 480-3500

ATTORNEY VERIFICATION

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

That affirmant is a member with the firm of McAndrew, Conboy and Prisco, Esqs., attorneys for the defendant in the within action; that affirmant has read the foregoing ANSWER and knows the contents thereof; that same is true to affirmant's knowledge, except as the matters herein stated to be alleged on information and belief; and that as to those matters, affirmant believes it to be true.

Affirmant further states that the reason this Verification is made by affirmant and not by the defendant is that the defendant either does not reside or maintain offices in the County in which the affirmant maintains his office.

The grounds of belief as to all matters not stated upon deponent's knowledge are documents, correspondence and records maintained in your affirmant's files and conversations and conferences had with the defendant.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Woodbury, New York
August 11, 2008

/s/ Peter G. Prisco

PETER G. PRISCO (7397)

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JOANNE RELLER, being duly sworn says:

That deponent is not a party to this action, is over 18 years of age, and resides at Greenlawn, New York.

That on August 11, 2008, deponent served the within

VERIFIED ANSWER WITH JURY DEMAND

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: BAITON McCARTHY, LLC
Attorneys for Plaintiff
26 Broadway, Suite 2400
New York, New York 10004
(212) 480-3500

JOANNE RELLER

Sworn to before me this
August 11, 2008

Notary Public
Lucy G. Bone
Notary Public, State of New York
No.: 01B05046732
Qualified in Suffolk County
Commission Expires: 7/17/11